THE

WEEKLY INSPECTOR.

" Of those men who have overturned the Liberties of Republics, the greatest number
" have begun their career by paying an obsequious court to the People—com-
" mencing DEMAGOGUES, and ending TYRANTS." HAMILTON.

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TRIAL OF COL. BURR.

(Continued from page 329.)

Opinion of Chief Justice Marshall, on the motion for a writ of subpœna ducee tecum.

(CONCLUDED.)

This point being disposed of, it remains to inquire, whether a *subpœna duces tecum* can be directed to the President of the U. S. and whether it ought to be directed in this case.

This question originally consisted of two points. It was at first doubted whether a subpœna could issue in any case to the chief magistrate of the nation; and, if it could, whether that subpœna could do more than direct his personal attendance; whether it could direct him to bring with him a paper, which was to constitute the gist of his testimony.

While the argument was opening, the attorney for the United States avowed his opinion that a general subpœna might issue to the President, but not a subpœna *duces tecum*. This terminated the argument on that point of the question. The court, however, has thought it necessary to state briefly the foundation of its opinion that such a subpœna may issue.

In the provisions of the constitution and of the statute, which gives to the accused a right to the compulsory process of the court, there is no exception whatever. The obligation, therefore, of those provisions is general; and it would seem that no person could claim an exemption from them, but one who could not be a witness. At any rate, if an exception to the general principle exists, it must be looked for in the law of evidence. The exceptions furnished by the law of evidence, (with only one reservation) so far as they are personal, are of those only whose testimony could not be received. The single reservation alluded to, is the case of the king. Although he may perhaps give testimony, it is said to be incompatible with his dignity to appear under process of the court. Of the many points of difference which exist between the first magistrate in England and the first magistrate of the United States, in respect to the personal dignity conferred on them by the constitution of their respective nations, the court will only select and mention two. It is a principle of the English constitution, that the king can do no wrong, that no blame can be imputed to him, that he cannot be named in debate.

By the constitution of the United States, the President, as well as every other officer of government, may be impeached, may be removed from office, on conviction of high crimes and misdemeanors. By the constitution of G. Britain the crown is hereditary, and the monarch can never become a subject.

By that of the U. S. the President is elected from the mass of the people; and on the expiration of the time for which he is elected, returns to the mass of the people again.

How essentially this difference of circumstances must vary the policy of the laws of the two countries in reference to the personal dignity of the executive chief, will be perceived by every person—In this respect the first magistrate of the union may more properly be likened to the first magistrate of a state—at any rate under the former confederation—and it is not known ever to have been doubted that the chief magistrate of a state might be served with a subpœna ad testificandum.

If in any court of the United States it has ever been decided that a subpœna cannot issue to the President, that decision is unknown to this court.

If, upon any principle, the President could be construed to stand exempt from the general provisions of the constitution, it would be because his duties as chief magistrate demand his whole time for national objects. But it is apparent that this demand is not unremitting, and if it should exist at the time when his attendance in a

court is required, it would be shown on the return of the subpœna, and would rather constitute a reason for not obeying the process of the court, than a reason against its being issued. In point of fact, it cannot be doubted that the people of England have the same interest in the service of the executive government, that is of the cabinet council, that the American people have in the service of the executive of the United States, and that their duties are as arduous and unremitting. Yet, it has never been alleged that a subpœna might not be directed to them.

It cannot be denied that to issue a subpœna to a person filling the exalted station of the chief magistrate, is a duty which would be dispensed with muchmore cheerfully than it would be, performed; but if it be a duty the court can have no choice in that case.

If then, as is admitted by the counsel for the United States, a subpœna may issue to the President, the accused is entitled to it of course; and whatever difference may exist with respect to the power to compel the same obedience to the process as if it had been directed to a private citizen, there exists no difference with respect to the right to obtain it. The guard furnished to this high officer to protect him from being harassed by vexatious and unnecessary subpœnas, is to be looked for in the condut of a court after those subpœnas have issued, not in any circumstance which is to precede their being issued.

If in being summoned to give his personal attendance to testify, the law does not discriminate between the President and a private citizen; what foundation is there for the opinion that this difference is created by the circumstance that his testimony depends on a paper in his possession, not on facts which have come to his knowledge otherwise than by writing? The court can perceive no foundation for such an opinion. The propriety of introducing any paper into a case as testimony, must depend on the character of the paper, not on the character of the person who holds it. A subpœna decus tecum then may issue to any person to whom an ordinary subpœna may issue, directing him to bring any paper of which the party praying it has a right to avail himself as a testimony, if indeed that be the necessary process for obtaining the view of such paper.

When this fact was suddenly introduced, the court felt some doubt concerning the propriety of directing a subpœna to the chief magistrate, and some doubt also concerning the propriety of directing any paper in his possession, not public in its nature, to be exhibited to the court. The impression that the questions which might arise in consequence of such process, were more proper for discussion on the return of the process than on its issuing, was then strong on the mind of the judges, but the circumspection with which they would take any step which could in any manner relate to that high personage, prevented their yielding readily to those impressions, and induced the request that those points, if not admitted, might be argued. The result of that argument is a confirmation of the impression originally entertained. The court can perceive no legal objection to issuing, a subpœna duces tecum to any person whetever, provided the case be such as to justify the process.

This is said to be a motion to the discretion of the court. This is true. But a motion to its discretion, is a motion not to its inclination, but to its judgement, and its judgement is to be guided by sound legal principles.

A subpœna duces tecum varies from an ordinary subpœna only in this, that a witness is summoned for the purpose of bringing with him a paper in his custody. In some of our sister states, whose systems of jurisprudence is erected on the same foundation with our own, this process we learn issues of course. In this state it issues not absolutely of course, but with leave of the court. No case however exists, as is believed, in which the motion has been founded on an affidavit, in which it has been denied, or in which it has been opposed. It has been truly observed that the opposite party can regularly take no more interest in the awarding a subpœna duces tecum, than in the awarding an ordinary subpœna. In either case he may object to any delay, the grant of which may be implied in granting the subpœna, but he can no more object regularly to the legal means of obtaining testimony which exists in the papers, than testimony which exists in the mind of the person who may be summoned. If no inconvenience can be sustained by the opposite party, he can only oppose the motion in the character of an amicus curid to prevent the court from making an improper order, or from burdening some officers by compelling an unnecessary attendance. This court would certainly be very unwilling to say that upon fair construction the constitutional and legal right to obtain its process to compel the attendance of witnesses does not extend to their bringing with them such papers as may be material in the defence. The literal distinction which exists between the cases is too much attenuated to be countenanced in the tribunals of a just and humane nation. If then the subpœna be used without inquiry into the manner of its application, it would seem to trench

on the privileges in which the constitution extends to the accused, it would seem to reduce his means of defence within narrower limits than is designed by the fundamental law of our country, if an overstrained vigour should be used with respect to right to apply for papers deemed by himself to be material. In the one case, the accused is made the absolute judge of the testimony to be summoned. If, in the other, he is not to judge absolutely for himself, his judgement ought to be controlled only so far as it is apparent that he means to exercise his privileges, not really in his own defence, but for purposes which the court ought to discountenance. The court would not lend its aid to motions so obviously designed to manifest disrespect to the government, but the court has no right to refuse its aid to motions for papers to which the accused may be entitled, and which may be material in his defence.

These observations are made to show the nature of the discretion which may be exercised. If it is apparent that the papers are irrelative to the case, or that for state reasons they cannot be introduced into the defence, the subpœna duces tecum would be useless; but if this is not apparent; if they may be important in the defence; if they may be safely read at the trial, would it not be a blot in the page which records the judicial proceedings of this country, if in a case of such serious import as this, the accused should be denied the use of them?

The counsel for the United States, take a very different view of this subject, and insist that a motion for process to obtain testimony should be supported by the same full and explicit proof of the nature and application of that testimony which would be required, on a motion which would delay public justice, which would arrest the ordinary course of proceeding, or which would in any other manner affect the rights of the opposite party. In favour of this position has been urged the opinion of one whose loss, as a friend and as a judge, I sincerely deplore, whose worth I feel, and whose authority I shall at all times greatly respect. If his opinion was really opposed to mine, I should certainly revise and deliberately revise the judgement I had formed. But I perceive no such opposition.

In the trials of Smith and Ogden, the court in which judge Patterson presided, required a special affidavit in support of a motion made by the counsel for the accused for a continuance and for an attachment against witnesses who had been summoned, and had failed to attend.

Had this requisition of a special affidavit been made, well as a foundation for an attachment, as for a continuance, the cases would not have been parallel; because the attachment was considered by the counsel for the prosecution merely as a mean for punishing the contempt, and a court might certainly require a stronger testimony to reduce them to punish a contempt, than would be required to lend its aid to a part in order to procure evidence in a cause. But the proof furnished by the case is most conclusive that the special statements of the affidavit were required solely on account of the continuance.

Although the counsel for the United States considered the motion for an attachment merely as a mode of punishing for contempt, the counsel for Smith and Ogden considered it as a compulsory process to bring in a witness, and moved a continuance until they could have the benefit of this process. The continuance was to arrest the ordinary course of justice, and therefore the court required a special affidavit, showing the materiality of the testimony before this continuance could be granted. *Prima facie*, the evidence could not apply to the case, and this was an additional reason for a special affidavit. The object of this special statement was expressly said to be for a continuance.

"Colden proceeded: "The application is to put off the cause on account of the absence of witnesses, whose testimony the defendant alleged is material for his defence, and who have disobeyed the ordinary process of the court. In compliance with the intimation from the bench yesterday, the defendant has disclosed, by the affidavit which I have just read, the points to which he expects the witnesses who have been summoned will testify.

"If the court cannot or will not issue compulsory process to bring in the witnesses who are the objects of this application, then the cause will not be postponed.

"Or if it appears to the court, that the matter disclosed by the affidavit might not be given in evidence if the witnesses were now here, then we cannot expect that our motion will be successful. For it would be absurd to suppose that the court will postpone the trial on account of the absence of witnesses whom they cannot compel to appear; and of whose voluntary attendance there is too much reason to despair; or on account of the absence of witnesses, who, if they were before the court, could not be heard on the trial."—(Page 12.)

This argument states unequivocally the purpose for which a special affidavit was required.

The counsel for the United States considered the subject in the same light. After

exhibiting an affidavit for the purpose of showing that the witnesses could not probably possess any material information, Mr. Sandford said, "It was decided by the court yesterday, that it was incumbent on the defendant, in order to entitle himself to a postponement of the trial, on account of the absence of these witnesses, to show in what respect they are material for his defence. It was the opinion of the court, that the general affidavit in the common form would not be sufficient for this purpose; but that the particular facts expected from the witnesses must be disclosed, in order that the court might, upon those facts, judge of the propriety of granting the postponement."—(page 27.)

The court frequently treated the subject so as to show the opinion that the special affidavit was required only on account of the continuance; but what is conclusive on this point is, that after deciding the testimony of the witnesses to be such as could not be offered to the jury, Judge Patterson was of opinion that a rule to show cause why an attachment should not issue, ought to be granted. He could not have required the materiality of the witness to be shown on a motion, the success of which, did not, in his opinion, in any degree depend on that materiality, and which he granted, after deciding the testimony to be such as the jury ought not to hear. It is then most apparent that the opinion of judge Patterson has been misunderstood, and that no inference can possibly be drawn from it, opposed to the principle which has been laid down by the court. That principle will therefore be applied to the present motion.

The first paper required is the letter of general Wilkinson, which was referred to in the message of the President to congress. The application of that letter to the case is shown by the terms in which the communication was made. It is a statement of the conduct of the accused, made by the person who is declared to be the essential witness against him. The order for producing this letter is opposed:

1st. Because it is not material to the defence.

It is a principle universally acknowledged, that a party has a right to oppose to the testimony of any witness against him, the declarations which that witness has made at other times on the same subject. If he possesses this right, he must bring forward proof of those declarations. This proof must be obtained before he knows positively what the witness will say; for if he waits until the witness has been heard at the trial, it is too late to meet him with his former declarations. Those former declarations, therefore, constitute a mass of testimony, which a party has a right to obtain by way of precaution, and the positive necessity of which can only be decided at the trial.

It was with some surprise an argument was heard from the bar, insinuating that the award of a subpœna on this ground gave the countenance of the court to suspicions affecting the veracity of a witness who is to appear on the part of the United States. This observation could not have been considered. In contests of this description the court takes no part; the court has no right to take a part. Every person may give in evidence such as is stated in this case. What would be the feelings of the prosecutor, if in this case the accused should produce a witness completely exculpating himself, and the attorney for the United States should be arrested in his attempt to prove what the same witness had said, upon a former occasion, by a declaration from the bench, that such an attempt could not be permitted, because it would imply a suspicion in the court that a witness had not spoken the truth? Respecting so unjustifiable an interposition, but one opinion could be formed.

The 2d objection is, that the letter contains matter which ought not to be disclosed.

That there may be matter, the production of which the court would not require, is certain; but that in a capital case the accused ought in some form to have the benefit of it, if it was really essential to his defence, is a position which the court would very reluctantly deny. It ought not to be believed that the department which superintends prosecutions in criminal cases, would be inclined to withhold it. What ought to be done under such circumstances presents a delicate question, the discussion of which, it is hoped, will never be rendered necessary in this country. At present it need only be said, that the question does not occur at this time. There is certainly nothing before the court which shows that the letter in question contains any matter, the disclosure of which would endanger the public safety. If it does contain such matter, the fact may appear before the disclosure is made. If it does contain any matter which it would be imprudent to disclose, which it is not the wish of the executive to disclose, such matter, if it be not immediately and essentially applicable to the point, will of course be suppressed. It is not easy to conceive that so much of the letter as relates to the conduct of the accused, can be a subject of delicacy with the President. Every thing of this kind, however, will

have its due consideration on the return of the subpœna.

3dly. It has been alleged that a copy may be received instead of the original, and the act of Congress has been cited in support of this proposition.

This argument presupposes that the letter required is a document filed in the department of state, the reverse of which may be, and most properly is, the fact. Letters addressed to the President are most usually retained by himself. But were the fact otherwise, a copy might not answer the purpose. The copy could not be superior to the original, and the original itself could not be admitted, if denied, without proof that it was the hand writing of the witness. Suppose the case put at the bar of an indictment on this letter for a libel, and on its production it should appear not to be in the hand writing of the person indicted: Would its being deposited in the department, of state make it his writing, or subject him to the consequences of his having written it? Certainly not. For the purpose of showing the letter to have been written by a particular person, the originol must be produced, and a copy could not be admitted.

On the confidential nature of this letter much has been said at the bar, and authorities have been produced which appear conclusive. Had its contents been orally communicated, the person to whom the communications were made, could not have excused himself from detailing them so far as they might be deemed essential in the defence. Their being in writing, gives no additional sanctity, the only difference produced by that circumstance is, that the contents of the paper must be proved by the paper itself, not by the recollection of the witness.

Much has been said about the disrespect to the chief magistrate, which is implied by this motion, and by such a decision of it as the law is believed to require.

These observations will be very truly answered by the declaration that this court feels many perhaps peculiar motives for manifesting as guarded a respect for the chief magistrate of the union, as is compatible with its official duties. To go beyond these would exhibit a conduct which would deserve some other appellation than the term respect.

It is not for the court to anticipate the event of the present prosecution: should it terminate as is expected on the part of the United States, all those who are concerned in it would certainly regret that a paper which the accused believed to be essential to his defence, which may for aught that appears, be essential, had been withheld from him. I will not say that this circumstance would in any degree tarnish the reputation of the government, but I will say that it would justly tarnish the reputation of the court which had given its sanction to its being withheld. Might I be permitted to utter one sentiment with respect to myself, it would be to deplore most earnestly the occasion which should compel me to look back on any part of my official conduct with so much self-reproach as I should feel, could I declare on the information now possessed that the accused is not entitled to the letter in question, if it should be really important to him.

The propriety of requiring the answer to this letter, is more questionable. It is alleged that it must probably communicate orders showing the situation of this country with Spain, which will be important on the misdemeanor. If it contains matter not essential to the defence, and the disclosure is unpleasant to the executive, it certainly ought not to be disclosed. This is a point which will appear on the return.

The demand of the orders which have been issued, and which have been, as is alleged, published in the Natchez Gazette, is by no means unusual.—Such documents have often been produced in the courts of the United States and the courts of England. If they contain matter interesting to the nation, the concealment of which is required by the public safety, that matter will appear upon the return. If they do not, and are material, they may be exhibited.

It is said they cannot be material, because they cannot justify any unlawful resistance which may have been employed or meditated by the accused.

Were this admitted, and were it also admitted that such resistance would amount to treason, the orders might still be material, because they might tend to weaken the endeavour to connect such overt act with any overt act of which this court may take cognizance.

The court, however, is rather inclined to the opinion that the subpœna in such case ought to be directed to the head of the department in whose custody the orders are, and the court must suppose that the letter of the secretrary of the navy, which has been stated by the attorney for the United States, to refer the counsel for the prisoner to his legal remedy for the copies he desired, alluded to such a motion as is now made.

The affidavit on which this motion is grounded, has not been noticed. It is believed, that such a subpœna as is asked, ought to issue, if there exists any reason for supposing that the testimony may be

material, and ought to be admitted. It is only because the subpœna is addressed to those who administered the government of this country, that such an affidavit was required as would furnish probable cause to believe that the testimony was desired for the real purposes of defence, and not for such as this court will for ever discountenance.

(To be continued.)

SCRAPS.

——Quot capitum vivunt, totidem studiorum
Millia.——

The following letter has been addressed by Mr. Fulton to the Mayor and Corporation of this city.

GENTLEMEN,

Yesterday (Monday) my desire to satisfy the public curiosity at the stated minute was as great as my never ceasing anxiety to see our harbours and coast placed beyond the power of foreign insults; and I lament exceedingly that numbers were disappointed by the explosion not taking place on the first attack. But it has given me much additional confidence in my engines, and I hope it will be some satisfaction to you and the public to know that the failure of the first attack was occasioned by the trifling circumstance of the lock being placed under the torpedo so that when it struck, the powder fell out of the pan and did not take fire. On taking the torpedoes out of water, where they had been for two hours, I found the locks and powder perfectly dry, and I immediately discovered the cause of the failure, which I corrected by placing a piece of quick-match in the charge which the lock contained. Thus arranged, the fire was communicated to the 70 pounds of powder in the body of the torpedo. An explosion took place, and the brig was decomposed.

You have now seen the effect of the explosion of powder under the bottom of a vessel, and this I believe is the best and most simple mode of using it with the greatest effect in marine wars; for a right application of one torpedo will annihilate a ship of the line, nor leave a man to relate the dreadful catastrophe. Thus should a ship of the line containing 500 men, contend with 10 good row boats, each with a torpedo and ten men, she would risk total annihilation, while the boats, under cover of the night, and quick movements, would risk only a few men of 100.

When two ships of equal force engage, it may be doubtful which will gain the victory; frequently one hundred men are killed on each side, as many wounded, and ships much injured; but even the vanquished vessel will admit of being repaired, and thus the ships of war are not diminished, but continue to increase, and tyrannize over the rights of neutrals and peaceful nations. Having now clearly demonstrated the great effect of explosion under water, it is easy to conceive that by organization and practice, the application of the torpedoes will, like every other other art, progress to perfection. Little difficulties and errors will occur in the commencement, as has been the case in all new inventions, but where there is so little expense, so little risk, and so much to be gained, it is worthy of consideration, whether this system should not have a fair trial. Gunpowder within the last 300 years has totally changed the art of war, and all my reflections have led me to believe that this application of it will in a few years put a stop to maritime wars, and give that liberty on the seas which has been long and anxiously desired by every good man, and secure to America that liberty of commerce, tranquillity, and independence, which will enable her citizens to apply their mental and corporeal faculties to useful and humane pursuits, to the improvement of our country, and the happiness of the whole people.

Gentlemen, with deference I sub-

mit this view of the subject to you and every thinking American.

I have the honour to be,
With profound respect,
Your most obedient, and
Very humble servant,
ROBT. FULTON.

Mr. Fulton is not the only philosopher who has supposed it possible by sub-marine explosions to demolish the ships of an enemy. A Mr. D. Bushnell, of Connecticut, made various experiments during the American revolutionary war, with sub-marine vessels, to which were attached a powder magazine and its appendages, intended to be fastened under the bottom of ships of war, and left to explode *.

The following is an account of the experiments made by Mr. Bushnell, to prove the nature and use of his sub-marine vessel.

" *Experiments made to prove the nature*
" *and use of a sub-marine vessel.*

" The first experiment I made, was with about two ounces of gun powder, which I exploded 4 feet under water, to prove to some of the first personages in Connecticut, that powder would take fire under water.

" The second experiment was made with two pounds of powder, inclosed in a wooden bottle, and fixed under a hogshead, with a two inch oak plank between the hogshead and the powder; the hogshead was loaded with stones as deep as it could swim; a wooden pipe descending through the lower head of the hogshead, and through the plank, into the powder contained in the bottle, was primed with powder. A match put to the priming, exploded the powder, which produced a very great effect, rending the plank into pieces; demolishing the hogshead; and casting the stones and the ruins of the hogshead, with a body of water, many feet into the air, to the astonishment of the spectators. This experiment was likewise made for the satisfaction of the gentlemen above mentioned.

" I afterwards made many experiments of a similar nature, some of them with large quantities of powder; they all produced very violent explosions, much more than sufficient for any purpose I had in view.

" In the first essays with the sub-marine vessel, I took care to prove its strength to sustain the great pressure of the incumbent water, when sunk deep, before I trusted any person to descend much below the surface: and I never suffered any person to go under water, without having a strong piece of rigging made fast to it, until I found him well acquainted with the operations necessary for his safety. After that, I made him descend and continue at particular depths, without rising or sinking, row by the compass, approach a vessel, go under her, and fix the *wood-screw* mentioned in No. 2, and marked A, into her bottom, &c. until I thought him sufficiently expert to put my design into execution.

" I found, agreeably to my expectations, that it required many trials to make a person of common ingenuity, a skilful operator: the first I employed, was very ingenious, and made himself master of the business, but was taken sick in the campaign of 1776, at New-York, before he had an opportunity to make use of his skill, and never recovered his health sufficiently, afterwards.

Experiments made with a sub-marine vessel.

" After various attempts to find an operator to my wish, I sent one who appeared more expert than the rest, from New-York, to a 50 gun ship lying not far from Governor's island. He went under the ship, and attempted to fix the wooden screw into her bottom, but struck as he supposes, a bar of iron, which passes from the rudder

* For a particular account of the general principles and construction of these machines, see Transactions of the American Philosophical Society, vol. IV. p. 303.

hinge, and is spiked under the ship's quarter. Had he moved a few inches, which he might have done, without rowing, I have no doubt but he would have found wood where he might have fixed the screw; or if the ship were sheathed with copper, he might easily have pierced it: but not being well skilled in the management of the vessel, in attempting to move to another place, he lost the ship; after seeking her in vain, for some time he rowed some distance, and rose to the surface of the water, but found day light had advanced so far, that he durst not renew the attempt. He says that he could easily have fastened the magazine under the stem of the ship, above water, as he rowed up to the stern, and touched it before he descended. Had he fastened it there, the explosion of one hundred and fifty pounds of powder, (the quantity contained in the magazine,) must have been fatal to the ship. In his return from the ship to New-York, he passed near Governor's island, and thought he was discovered by the enemy, on the island; being in haste to avoid the danger he feared, he cast off the magazine, as he imagined it retarded him in the swell, which was very considerable. After the magazine had been cast off one hour, the time the internal apparatus was set to run, it blew up with great violence.

"Afterwards, there were two attempts made in Hudson's river, above the city, but they effected nothing. One of them was by the aforementioned person. In going towards the ship, he lost sight of her, and went a great distance beyond her: when he at length found her, the tide ran so strong, that as he descended under water, for the ship's bottom—it swept him away. Soon after this, the enemy went up the river, and pursued the boat which had the sub-marine vessel on board—and sunk it with their shot. Though I afterwards recovered the vessel, I found it impossible, at that time, to prosecute the design any farther. I had been in a bad state of health, from the beginning of my undertaking, and was now very unwell; the situation of public affairs was such, that I despaired of obtaining the public attention, and the assistance necessary. I was unable to support myself, and the persons I must have employed, had I proceeded. Besides, I found it absolutely necessary, that the operators should acquire more skill in the management of the vessel, before I should expect success; which would have taken up some time, and made no small additional expense. I therefore gave over the pursuit for that time, and waited for a more favourable opportunity, which never arrived."

Other experiments made with a design to fire shipping.

"In the year 1777, I made an attempt from a whale-boat, against the Cerberus frigate, then lying at anchor between Connecticut river and New London, by drawing a machine against her side, by means of a line. The machine was loaded with powder, to be exploded by a gun lock, which was to be unpinioned by an apparatus, to be turned by being brought along side of the frigate. This machine fell in with a schooner at anchor, astern of the frigate, and concealed from my sight. By some means or other, it was fired, and demolished the schooner and three men—and blew the only one left alive, overboard, who was taken up very much hurt.

"After this, I fixed several kegs, under water, charged with powder, to explode upon touching any thing, as they floated along with the tide: I set them afloat in the Delaware, above the English shipping at Philadelphia, in December, 1777. I was unacquainted with the river, and obliged to depend upon a gentleman very imperfectly acquainted with that part of it, as I afterwards found. We went as near the shipping as he durst venture; I believe the darkness of the night greatly deceived him, as it did me. We set them adrift, to fall with the ebb, upon the shipping. Had we been within sixty rods, I believe they

must have fallen in with them immediately, as I designed; but as I afterwards found, they were set adrift much too far distant, and did not arrive, until after being detained some time by frost, they advanced in the day time, in a dispersed situation, and under great disadvantages. One of them blew up a boat, with several persons in it, who imprudently handled it too freely, and thus gave the British that alarm, which brought on *the battle of the kegs*.

Darwin gives us a glowing description of what may be anticipated from sub-marine navigation.

LED by the sage*, lo! Britain's sons shall guide
Huge sea-balloons beneath the tossing tide,
The diving castles, roof'd with spheric glass,
Ribb'd with strong oak, and barr'd with bolts of brass,

* Dr. Priestley's discovery of the production of pure air from such variety of substances, will probably soon be applied to the improvement of the diving bell, as the substances which contain vital air in immense quantities, are of little value, as manganese and minium. In every hundred weight of these is combined about twelve pounds of pure air; now as sixty pounds of water are about a cubic foot, and as air is about eight hundred times lighter than water, five hundred weight of minium will produce eight hundred cubic feet of air, or about six thousand gallons. Now as this is at least thrice as pure as atmospheric air, a gallon of it may be supposed to serve for three minutes respiration for one man. At present the air cannot be set at liberty from minium by vitriolic acid, without the application of some heat; this is, however, very likely to be discovered, and will then enable adventurers to journey beneath the ocean in large inverted ships, or diving balloons.

Mr. Boyle relates, that Cornelius Dubelle contrived not only a vessel to be rowed under water, but also a liquor to be rowed in that vessel, which would supply the want of fresh air. The vessel was made by order of James I. and carried twelve rowers, besides passengers. It was tried in the river Thames, and one of the persons who was in that sub-marine voyage, told the particulars of the experiments to a person who related them to Mr. Boyle.

Buoy'd with pure air, shall endless tracks pursue,
And Priestley's hand the vital flood renew.
Then shall Brittania rule the wealthy realms,
Which ocean's wide insatiate wave overwhelms;
Confine in netted bowers his scaly flocks,
Part his blue plains, and people all his rocks,
Deep in warm tides beneath the line that roll
Beneath the shadowy ice-isles of the pole,
Onward, through bright meandering vales, afar,
Obedient sharks shall trail her scepter'd car,
With harness'd necks the pearly flood disturb,
Stretch the silk rein, and champ the silver curb;
Pleas'd, round her triumph wandering Tritons play,
And sea-maids hail her on the watery way.
Oft shall she weep, beneath the chrystal waves,
O'er shipwreck'd lovers, weltering in their graves;
Mingling in death, the brave and good behold,
With slaves to glory, and with slaves to gold;
Shrin'd in the deep, shall DAY and SPALDING mourn *,
Each in his treacherous bell, sepulchral urn!

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* *Day and Spalding mourn.* Mr. Day perished in a diving bell, or diving boat, of his own construction, at Plymouth, in June, 1774, in which he was to have continued, for a wager, for twelve hours, one hundred feet in water, and probably perished from his not possessing all the hydrostatic knowledge that was necessary. See Annual Register for 1774, p. 245.

Mr. Spalding was professionally ingenious in the art of constructing and managing the diving bell, and had practised the business many years with success. He went down, accompanied by one of his young men, to view the wreck of the Imperial East-Indiaman, at the Kish bank, in

The celebrated Dr. Halley gives a description of a diving bell fitted under his immediate direction, but which, it must be acknowledged, does not possess so high claims to the attention of philosophers as the machine of Bushnell. We will, however, present our readers with an extract from his account of a bell which enabled him to remain for hours under water with impunity.

"The bell I made use of was of wood, containing about 60 cubic feet in its concavity; and was of the form of a truncate cone, whose diameter at the top was three feet, and at the bottom five. This I coated with lead so heavy, that it would sink empty; and I distributed the weight so about its bottom, that it would go down in a perpendicular direction, and no other. In the top I fixed strong but clear glass, as a window to let in light from above, and likewise a cock to let out the hot air that had been breathed: and below, about a yard under the bell, I placed a stage which hung by three pullies, each of which was charged with about one hundred weight, to keep it steady. This machine I suspended from the mast of a ship by a sprit, which was sufficiently secured by stays to the mast head, and was directed by braces to carry it overboard, clear of the ship's side, and to bring it again within board as occasion required.

"To supply air to this bell when under water, I caused a couple of barrels of about 36 gallons each to be cased with lead, so as to sink empty; each of them having a bung-hole in its lowest parts to let in the water, as the air in them condensed on their descent; and to let it out again when they were drawn up full from below. And to a hole in the uppermost part of those barrels, I fixed a leathern trunk or hose, well liquored with bees-wax and oil, and long enough to fall below the bung-hole, being kept down by a weight appended; so that the air in the upper part of the barrels could not escape, unless the upper ends of these hose were first lifted up.

"The air-barrels being thus prepared, I fitted them with tackle proper to make them rise and fall alternately, after the manner of two buckets in a well; which was done with so much ease, that two men, with less than half their strength, could perform all the labour required: and in their descent they were directed by lines fastened to the under edge of the bell, the ends of which passed through rings on both sides the leathern hose in each barrel; so that sliding down by these lines, they came readily to the hand of a man who stood on the stage on purpose to receive them, and to take up the end of the hose into the bell. Through these hose, as soon as the ends came above the surface of the water in the barrels, all the air that was included in the upper parts of them was blown with great force into the bell, whilst the water entered at the bung-holes below, and filled them; and as soon as the air of one barrel had been thus received, upon a signal given, that was drawn up, and at the same time the other descended; and, by an alternate succession, furnished air so quick, and in so great plenty, that I myself have been one of five who have been together at the bottom in nine or ten fathom of water, for above an hour and a half at a time, without any ill sort of consequence—and I might have continued there as long as I pleased, for any thing that appeared to the contrary.

Ireland. On descending the third time, in June, 1783, they remained about one hour under water, and had two barrels of air sent down to them; but on the signals not being repeated, after a certain time, they were drawn up by their assistants, and both found dead in the bell. Annual Register for 1783, p. 206.

These two unhappy events may for a time check the ardour of adventurers in traversing the bottom of the ocean, but it is probable in another half century it may be safer to travel under the ocean than over it, since Dr. Priestley's discovery of procuring pure air in such great abundance from the calces of metals.

Besides, the whole cavity of the bell was kept entirely free from water, so that I sat on a bench which was diametrically placed near the bottom, wholly dressed, with all my clothes on. I only observed that it was necessary to be let down gradually at first, at about 12 feet at a time; and then to stop and draw out the air that entered, by receiving three or four barrels of fresh air before I descended further. But being arrived at the depth designed, I then let out as much of the hot air that had been breathed, as each barrel would replenish with cool, by means of the cask at the top; through whose apurture, though very small, the air would rush with so much violence, as to make the surface of the sea boil, and to cover it with a white foam, notwithstanding the weight of water over us.

"Thus I found that I could do any thing that required to be done, just under us; and that by taking off the stage, I could, for a space as wide as the circuit of the beil, lay the bottom of the sea so far dry. as not to be over shoes thereon. And by the glass window so much light was transmitted, that when the sea was clear, and especially when the sun shone, I could see perfectly to read, or much more to fasten or lay hold on any thing under us that was to be taken up. And by the return of the air barrel I often sent up orders written with an iron pen on small plates of lead, directing how to move us from place to place, as occasion required. At other times, when the water was troubled and thick, it would be as dark as night below; but in such cases I have been able to keep a candle burning in the bell as long as I pleased, notwithstanding the great expense of air necessary to maintain the flame. By an additional contrivance I have found it not impracticable for a diver to go out of an engine a good distance from it, the air being conveyed to him with a continued stream by small flexible pipes; which pipes may serve as a clue, to direct him back again when he would return to the bell."

The Enclyclopædia Brittanica, under the article "Diving Bell," mentions a number of subsequent attempts to improve this invention, and turn it to useful purposes. The success, however, has never equalled the expectations of the projectors, and Day and Spalding, as we have before seen, lost their lives in making experiments with this machine.

It is easy to perceive that a sub-marine vessel must be much more unmanageable in proportion to its size, than a vessel which floats on the surface. For the latter need have but a small part, in proportion to its capacity, opposed on the impeding water. The former, moving entirely under water, cannot take advantage of sails, and oars will act with much less effect which are continually covered with water, than those which are elevated above it, except when the impulse is communicated.

The catastrophe of Day and Spalding may probably be accounted for from the pressure of the air, at the great depth to which they descended, which may well be supposed to be sufficiently powerful to crush the strongest human frame, and cause it, as it were, to collapse. Thus, if a bottle be strongly corked, and let down a great depth into the sea, it will either be broken, or the cork forced into the bottle. Perhaps experiments might be made on animals in an air pump, which would throw some light on this subject. By injecting air so as to equal double, threble, quadruple, and so forth, the weight of the atmosphere, we might obtain some data by which to calculate the power of animals to sustain the pressure of the air which would be included in sub-ma-

rine vessels at different depths in the sea, allowing 33 ½ feet, or nearly, to be equal to the weight of one atmosphere.

We believe that sub-marine navigation, Dr. Darwin and Dr. Priestley to the contrary notwithstanding, will never be found practicable to any considerable extent. We are likewise of opinion, that if sub-marine explosions are ever rendered very formidable, they must be directed according to Mr. Bushnell's principles. It appears to us that, except in particular situations, where ships of war are at anchor in narrow channels, little can be expected from Mr. Fulton's machines, and we hope that our countrymen will not be so philosophical as to rest their hopes of security on any project of this kind.

From the Richmond Enquirer.

Commodore Truxtun.—The very honourable part which has been acted by this distinguished veteran, in relation to the affairs of Col. Burr; the flattering manner in which he was acquitted of all censure, by the Grand Jury, are sufficient inducements to bring him again into public notice. But when a long life of private honour, as well as public service, in all respects unsullied, are considered, Com. Truxtun, may be recommended to his country, as a worthy object for public employment.

It is true, that Com. Truxtun, is denominated a federalist, but he is neither a political sectary, nor a factious partizan: he has uniformly been an open, candid and honest patriot, thinking with independence, and speaking with freedom and candour. The British and French, have both felt the force of his superiour talents, and in the projects of Col. Burr, when the most flattering offers were made, he answered with promptitude and true patriotism; if your scheme is sanctioned by the government of my country, I will engage with ardour, if not I will hear no more of it. These are the traits which bespeak a man of intrinsic worth, and who deserves the confidence and employment of his country, and particularly at the present crisis.

Commodore Truxtun has been out of employment for some time, and this perhaps will occasion some difficulty among the present commanders. Let this be answered by the examples of France. The splendid successes of that nation, have been achieved by young and obscure generals, whose talents entitled them to elevation. The rulers of France sought for, and rewarded merit, and to this may be imputed their unrivalled successes.

England too affords examples; the celebrated and immortal Gen. Wolfe, and Admiral Nelson, were preferred to their seniors in age or rank, and these heroes have given a lustre to the British name, which will live to all eternity. Truxtun's case is much stronger; he is old in service, in virtue, in fame, in exploits, and in genuine patriotism; and there is not a man in existence, who ought to think himself dishonoured by such a commander.

This small tribute to merit, has been written much more with a view to promote the public weal than to pay a tribute to the merits of our distinguished and meritorious countryman.

A VIRGINIAN.

The following from a late Quebec Mercury, wears a hostile appearance.

"QUEBEC, *June* 19.

"We learn, by the arrival of Capt. Bettesworth, of his Majesty's frigate Crocodile, that orders had been received by the King's ships on the Halifax station, to board the American frigate now at sea, and *take by force*

every British seaman that may be found on board her. The force of the American ship is said to be 52 guns."

The editor of the Evening Post remarks on this article as follows:

"This is no more than we have always believed. We never could for a moment suppose that any English captain or commodore would proceed to the lengths that we have recently witnessed, without the support of direct and positive orders from the government.

"The strange and mysterious inconsistency of certain men and certain prints among us, in being eager for war with Great-Britain, and at the same time averse to preparing for it, by placing the country in a state of defence on shore, and by providing it with a navy to make itself respected at sea, can only be accounted for on the supposition that it will favour the plan of an alliance with France. A plan which was, in the early formation of our government, hatched between foreign spies and domestic traitors, and which, though for a time concealed, has never been abandoned by them. An alliance with France! It is already begun to be circulated in whispers. And what could France do for us? Surely a French soldiery is not wanted to fill our armies, and as to any aid at sea, France is without a marine to aid herself. Let us not be accused of harbouring imaginary suspicions. Were we at liberty to do so, we could divulge some things that would make the public stare. We will finish with one word: those who indulge hopes of this sort, may rest assured that the people of this country never will consent, under any circumstances, to become the allies, in order that they may, like all his other allies, at length become the vassals and slaves of the French Emperor."

Thus far Mr. Coleman, who is, we are happy to perceive, alarmed at the prospect before us. We hope that he will soon feel himself at liberty to bring to the light those mysteries, which he thinks will "make the public stare;" and we shall be happy to co-operate with his efforts. We have ever believed that no ordinary and innocent causes have contributed to strip this great nation defenceless, and, in these turbulent and insane times, leave our coasts naked as the "sand banks of the Indian ocean."

We have attempted, with much labour of investigation, in a series of numbers with the signature "Monitor," to trace to its source the cause of those imbecile measures which have stigmatized the present administration, disgraced the country; and which we believe was intended by the leaders of the dominant faction to compel us to seek security in the arms of the French Apega.

We cannot believe that the mere force of folly, could have induced the partizans of France in this country to annihilate our military marine, refuse to fortify our sea ports, and take every step which infernal ingenuity could suggest, to render us defenceless, and thus dependent on the *friendship* of a warring world for our existence as an independent nation. No, there is design, there is system, in all these proceedings, and such as must make every reflecting mind who has observed the signs of the times tremble with apprehension and shudder with horror.

The same men who fain would have enlisted America with France, when Genet attempted to levy troops for her service in this country, have proceeded without the shadow of turning towards the accomplishment of their great object, an intimate alliance between the two countries. This alliance they very well know would ter-

minate in rendering this country as completely a province of the jacobin empire as is Holland, or Italy, or any of the departments within the ancient limits of the French empire.

We have already repeatedly observed, and quoted the authority of jacobins themselves, that the politicians of the French revolution, under the specious pretext of giving freedom to mankind, designed nothing less than the making of France the seat of universal empire; that for that purpose, while they most assiduously cultivated the art of war, founded military academies, and in fine converted France into a military nation, the propagandists, or French emissaries, were proceeding like Mr. Jefferson, Duane, and Tom Paine, in America; Haugwitz, the Prince of peace, and other French spies in Europe, to charm their respective countrymen with the lullaby of peace, that they might the more easily fall a prey to all grasping jacobin ambition.

Unless we know the cause, we shall never find the remedy for the evils which threaten us. That we are at present in a weak, degraded, and deplorable state as a nation, not even jacobins can deny. Indeed Mr. Jefferson's speeches and other official communications contain *precious confessions* to that purport. But what has reduced us to this imbecile state? The measures of Mr.——and the *French illumined school.*

But when were those measures recommended and adopted? Since the period of Mr. J——'s embassy to Paris, and his intimacy with Condorcet and the other philosphizing pioneers of French power. Since that time his political tenets, and his political conduct, have been directly the reverse of what they were prior to that period. Hence the destruction of the navy, the refusal to fortify, and all the debilitating measures of the present administration.

From the United States Gazette.

The papers of the administration are still anxious that every thing to be done in regard to public affairs at the present crisis, should be done by individuals and popular assemblies, in order that in any event the government may escape reproach for suffering us to be insulted and injured with impunity. The Aurora is inviting the public attention to the difference "in the zeal of the southern people when Boston port was shut by a British act of parliament, and the conduct of the selectmen of Boston, when a British squadron shut up the port of Norfolk." —Insinuations of this sort are as mean as they are insidious. Have the government called for any aid from Boston which has been withheld? For the sense which the people of that town entertain of the late outrage, we refer to the proceedings of an *authorized* and *legal* town meeting, as published in this day's Gazette.—To compare the situation of the country now with that at the commencement of the revolution is preposterous. Then the object was to make war upon and overthrow the existing government: of course the people were compelled to take the management of affairs immediately into their own hands, in defiance of the government. If such is the present object, the democratic papers are pursuing the proper course. If not, it is the duty of the government to lead the way. It is ours merely to follow.

We have perused with attention the plan of Col. W. S. Smith, respecting the fortification of New-York, published in the Commercial Advertiser of the 17th inst. If our limits permitted, we would with pleasure insert the whole.

We shall at present merely insert the outlines of his plan.

He conceives the Narrows to be the only place in which efficient fortifications can be constructed. "On the west is presented an elevated shore, susceptible of three formideble batteries, one above the other. The first presenting an horizontal fire. From this a point blank shot from an eighteen pounder reaches about double the distance of the channel."

"The second, calculated for a plunging battery, will present a most destructive fire against an approaching enemy, at the same time that it effectually covers and protects the horizontal battery below.

"The third, a strong redoubt, with heavy artillery embarbett, offers a heavy fire against hostile ships at the full range of shot, as they approach the Narrows, at the same time extending ample protection to the batteries of the 1st and 2d position.

"In addition to these, at the distance of about 120 yards, is an inviting hill, well calculated for a redoubt, capable of containing about 120 men, from which a battery of 6 guns commands the bay at the full range of fire.

"In the rear of these redoubts, at the distance of 600 yards, is ground favourable for an encampment of 3000 men.

"On the eastern shore, the point of Long-Island descends gradually to the waters of the Narrows;—this point projects with a sandy flat into the water, at the distance of 289 yards, covered with from 4 to 6 feet of water, and consequently may be wharfed up so as to plant a heavy battery above high water mark, opposite to the horizontal and plunging batteries on the Staten-Island shore.—The distance between these batteries will be less than one mile. In rear of this position is an elevated spot for a close redoubt, capable of containing 500 men. Its cannon will afford ample protection to the horizontal battery on the pier, and at the same time give a plunging fire on the enemy. At 300 yards from this redoubt is a spot for a redoubt and battery of field fortification, to contain 120 men, and 8 pieces of artillery. This work affords the double advantage of enfilading the river through the Narrows, and of covering the right wing of an excellent encampment for 3000 men.

"To enforce more effectually the defence of the passage, it is proposed to station two floating batteries, armed with heavy guns, stationed on the north side of the two opposite horizontal batteries, attended by a sufficient number of gun-boats. These may with great facility form a line of fire, occupying the full space from the one shore to the other, and thus effectually strengthen the defence of the channel, and be fully protected by the fortifications and batteries on the shore.

"The narrows, thus garnished with fortifications, and garrisoned, and in case of solemn war and actual invasion, supported by additional troops in two advantageous camps, with the proposed floating batteries and gun boats, affords a formidable and sufficient defence for the entrance of the harbour. But the importance of the object ought not to permit the least neglect of any additional obstructions against an invading enemy. A cone sunk in the centre, crowned with four 32 pounders, with chains extending to the horizontal batteries on the Staten Island and Long-Island shore, supported by the two floating Batteries, and gun boats within the chain, and the harbour of New-York becomes the most formidable and best secured of any within my knowledge.

"The Narrows being thus secured, the positions on both sides are the places where the troops of the state of New-York and New-Jersey will assemble, and be ready to oppose the landing of any troops destined for the assault of the works. The harbour of New-York then becomes the safe depot of the produce of an immensely rich and extensive country; and the city, inaccessible to any invasion, may see the end of war without molestation or danger."

Extract from an elegiac poem, sacred to the memory and virtues of the Hon. Sir William Jones.

The Genius of Asia (who is here a female) descends, and pronounces the following panegyric on her favourite Jones.

To chase the tenfold gloom, my Jones, was thine,
To cheer the Bramin, and to burst his chains,
To search for latent gems the Sanscrit mine,
And wake the fervour of her ancient strains.

For oh! what pen shall paint with half thy fire
The power of music on the impassion'd soul,
When the great masters wak'd the Indian lyre,
And bade the burning song electric roll*.

The mystic veil that wraps the hallow'd shrines
Of India's deities, 'twas thine to rend;
With brighter fires each radiant altar shines,
To nature's awful God those fires ascend.

Sound the deep conch; dread Veeshnu's power proclaim,
And heap with fragrant woods the blazing urn;
I see sublime Devotion's noblest flame,
Midst Superstition's glowing embers burn!

'Twas thine, with daring wing and eagle eye,
To pierce antiquity's profoundest gloom,
To search the dazzling records of the sky,
And bid the stars the sacred page illume.

Nor did the instructive orbs of heaven alone
Absorb thy soul 'mid yon etherial fields;
To thee the vegetable world was known,
And all the blooming tribes the garden yields;

From the tall cedar, on the mountain's brow,
Which the fierce tropic storm in vain assails,
Down to the humblest shrubs that beauteous blow,
And scent the air of Asia's fragrant vales.

But talents—fancy--ardent, bold, sublime--
Unbounded science form'd thy meanest fame:
Beyond the grasp of death, the bound of time,
On wings of fire religion wafts thy name*.

The following horror fraught description of a sorceress, is from the poems of William Julius Mickle.

The golden gleam the sorceress spy'd,
And in her deepest cell,
At midnight's magic hour she tri'd
A tomb o'erpowering spell.

As shakes the bough of trembling leaf,
When whirlwinds sudden rise:
As stands aghast the warrior chief,
When his base army flies:

So shook, so stood the beauteous maid,
When from the dreary den
A wrinkled form came forth, array'd
In matted locks obscene.

Around her brows, with hemlock bound,
Loose hung her ash-gray hair,
And from two dreary caves profound
Her blue flam'd eye-balls glare.

Her skin of earthy red appear'd
Clung round her shoulder bones,
Like wither'd bark, by lightning sear'd,
When loud the tempest groans.

A robe of squalid green and blue
Her ghostly length array'd;
A gaping rent full to the view
Her furrow'd ribs display'd!

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* *The impressive title of one of the most ancient treatises on music, is, "the sea of passions."*

* *Alluding to some circumstances of devotion which occurred in the moments of Sir William's dissolution.*

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